

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

346A0030

SENATE JUDICIARY COMMITTEE

ENGROSSED NO. **SB16** - 1/29/97

Introduced by: Senator Whiting and Representatives DeMersseman, Belatti, Haley, and Koetzle
at the request of the Interim Criminal Code Revision Committee

1 FOR AN ACT ENTITLED, An Act to provide for the sunset of certain mandatory minimum
2 sentences.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-14-12 be amended to read as follows:

5 22-14-12. Any person who commits or attempts to commit any felony when armed with a
6 firearm, including a machine gun or short shotgun, is guilty of a Class 2 felony for the first
7 conviction. A second or subsequent conviction is a Class 1 felony. ~~The sentence imposed for a~~
8 ~~first conviction under this section shall carry a minimum sentence of imprisonment in the state~~
9 ~~penitentiary of five years. In case of a second or subsequent conviction under this section such~~
10 ~~person shall be sentenced to a minimum imprisonment of ten years in the penitentiary.~~

11 ~~Any sentence imposed under this section shall be consecutive to any other sentences imposed~~
12 ~~for a violation of the principal felony. Notwithstanding any other provision of law, the court shall~~
13 ~~not place on probation, suspend the execution of the sentence, or suspend the imposition of the~~
14 ~~sentence of any person convicted of a violation of this section.~~

Section 2. That § 22-14-13.1 be amended to read as follows:

22-14-13.1. Any person who commits or attempts to commit any felony when armed with a stun gun is guilty of a Class 5 felony for the first conviction. A second or subsequent conviction is a Class 3 felony. ~~Any sentence imposed under this section shall be consecutive to any other sentences imposed for a violation of the principal felony.~~

Section 3. That § 22-6-1 be amended to read as follows:

22-6-1. Except as otherwise provided by law, felonies are divided into the following eight classes which are distinguished from each other by the respective maximum penalties hereinafter set forth which are authorized upon conviction:

- (1) Class A felony: death or life imprisonment in the state penitentiary. ~~A lesser sentence than death or life imprisonment may not be given for a Class A felony~~ In addition, a fine of two hundred fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in the state penitentiary. ~~A lesser sentence may not be given for a Class B felony~~ In addition, a fine of one hundred thousand dollars may be imposed;
- (3) Class 1 felony: ~~life~~ seventy-five years imprisonment in the state penitentiary. In addition, a fine of ~~twenty-five~~ fifty thousand dollars may be imposed;
- (4) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of twenty-five thousand dollars may be imposed;
- (5) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of fifteen thousand dollars may be imposed;
- (6) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed;
- (7) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of five thousand dollars may be imposed; and

(8) Class 6 felony: two years imprisonment in the state penitentiary or a fine of two thousand dollars, or both.

The court, in imposing sentence on a defendant who has been found guilty of a felony, may order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section ~~shall limit~~ limits increased sentences for habitual criminals under §§ 22-7-7 and 22-7-8.

Except in cases where punishment is prescribed by law, every offense declared to be a felony and not otherwise classified is a Class 6 felony.

Section 4. That § 22-42-2 be amended to read as follows:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. However, the distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony. ~~A first conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section.~~ However, a first conviction for distribution to a minor

1 under this section shall be punished by a mandatory sentence in the state penitentiary of at least
2 five years, which sentence may not be suspended. Probation, suspended imposition of sentence,
3 or suspended execution of sentence may not form the basis for reducing the mandatory time of
4 incarceration required by this section. A second or subsequent conviction for distribution to a
5 minor under this section shall be punished by a mandatory sentence in the state penitentiary of
6 at least fifteen years, which sentence may not be suspended. Probation, suspended imposition of
7 sentence, or suspended execution of sentence, may not form the basis for reducing the mandatory
8 time of incarceration required by this section. A civil penalty may be imposed, in addition to any
9 criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand
10 dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the
11 acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding
12 of guilt by a jury or court.

13 Section 5. That § 22-42-3 be amended to read as follows:

14 22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may
15 manufacture, distribute, or dispense a substance listed in Schedule III; possess with intent to
16 manufacture, distribute, or dispense; a substance listed in Schedule III; create or distribute a
17 counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit
18 substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the
19 distribution of a substance listed in Schedule III to a minor is a Class 3 felony. ~~A first conviction~~
20 ~~under this section shall be punished by a mandatory sentence in the state penitentiary or county~~
21 ~~jail of at least thirty days, which sentence may not be suspended. A second or subsequent~~
22 ~~conviction under this section shall be punished by a mandatory penitentiary or county jail~~
23 ~~sentence of at least one year, which sentence may not be suspended. However, a first conviction~~
24 for distribution to a minor under this section shall be punished by a mandatory sentence in the
25 state penitentiary or county jail of at least ninety days, which sentence may not be suspended. A

1 second or subsequent conviction for distribution to a minor under this section shall be punished
2 by a mandatory sentence in the state penitentiary of at least two years, which sentence may not
3 be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a
4 conviction of a violation of this section not to exceed ten thousand dollars.

5 Section 6. That § 22-42-4 be amended to read as follows:

6 22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may
7 manufacture, distribute, or dispense a substance listed in Schedule IV; possess with intent to
8 manufacture, distribute, or dispense; a substance listed in Schedule IV; create or distribute a
9 counterfeit substance listed in Schedule IV; or possess with intent to distribute a counterfeit
10 substance listed in Schedule IV. A violation of this section is a Class 6 felony. However, the
11 distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. ~~A first conviction~~
12 ~~under this section shall be punished by a mandatory sentence in the state penitentiary or county~~
13 ~~jail of at least thirty days, which sentence may not be suspended. A second or subsequent~~
14 ~~conviction under this section shall be punished by a mandatory penitentiary or county jail~~
15 ~~sentence of at least one year, which sentence may not be suspended. However, a first conviction~~
16 for distribution to a minor under this section shall be punished by a mandatory sentence in the
17 state penitentiary or county jail of at least ninety days, which sentence may not be suspended. A
18 second or subsequent conviction for distribution to a minor under this section shall be punished
19 by a mandatory sentence in the state penitentiary of at least two years, which sentence may not
20 be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a
21 conviction of a violation of this section not to exceed ten thousand dollars.

22 Section 7. That § 22-42-7 be amended to read as follows:

23 22-42-7. The distribution of less than one-half ounce of marijuana without consideration is
24 a Class 2 misdemeanor; otherwise, the distribution of one ounce or less of marijuana is a Class
25 1 misdemeanor. The distribution of more than one ounce but less than one-half pound of

1 marijuana is a Class 6 felony. The distribution of one-half pound but less than one pound of
2 marijuana is a Class 5 felony. The distribution of one pound or more of marijuana is a Class 4
3 felony. However, the distribution of any amount of marijuana to a minor is a Class 5 felony. A
4 ~~first conviction of a felony under this section shall be punished by a mandatory sentence in the~~
5 ~~state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A~~
6 ~~second or subsequent conviction of a felony under this section shall be punished by a mandatory~~
7 ~~sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be~~
8 ~~punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may~~
9 ~~not be suspended.~~ However, a first conviction for distribution to a minor under this section shall
10 be punished by a mandatory sentence in the state penitentiary or county jail of at least ninety
11 days, which sentence may not be suspended. A second or subsequent conviction for distribution
12 to a minor under this section shall be punished by a mandatory sentence in the state penitentiary
13 of at least two years, which sentence may not be suspended. A civil penalty may be imposed, in
14 addition to any criminal penalty, upon a conviction of a felony violation of this section not to
15 exceed ten thousand dollars.

16 Section 8. That § 32-23-4 be amended to read as follows:

17 32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty
18 of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the
19 defendant's driving privileges for such period of time as may be determined by the court, but in
20 no event less than one year from the date sentence is imposed or one year from the date of
21 discharge from incarceration, whichever is later. ~~If the person is convicted of driving without a~~
22 ~~license during that period, he shall be sentenced to the county jail for not less than ten days,~~
23 ~~which sentence may not be suspended.~~

24 Section 9. That § 32-23-4.6 be amended to read as follows:

25 32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense, or subsequent

1 offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4,
2 the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall
3 unconditionally revoke the defendant's driving privileges for such period of time as may be
4 determined by the court, but in no event less than two years from the date sentence is imposed
5 or two years from the date of discharge from incarceration, whichever is later. ~~If the person is~~
6 ~~convicted of driving without a license during that period, he shall be sentenced to the county jail~~
7 ~~for not less than twenty days, which sentence may not be suspended.~~

8 Section 10. That § 41-8-18 be amended to read as follows:

9 41-8-18. A violation of § 41-8-2, 41-8-6, 41-8-15, or 41-8-17 is a Class 1 misdemeanor for
10 each prohibited act or each big game animal or any part thereof, taken, caught, killed, sold,
11 offered, or exposed for sale, in possession or in possession with intent to sell, shipped by
12 common carrier, or transported to any point inside or outside the state in violation of law. Upon
13 conviction of any person for hunting or taking big game, except wild turkey, during the
14 nighttime, during a closed season or without a license, the court shall revoke that person's
15 hunting privileges for a period of one year, and impose a fine of not less than two hundred fifty
16 dollars for each animal involved ~~and that person shall be required to serve a minimum of three~~
17 ~~days in the county jail.~~ A second or subsequent conviction of any person for hunting or taking
18 big game, except wild turkey, during the nighttime, during a closed season, or without a license
19 is a Class 6 felony. In addition, the court shall revoke that person's hunting privileges for a period
20 of five years.

21 Section 11. The effective date of this Act is July 1, 1999.

1 **BILL HISTORY**

2 January 14 - First read in Senate and referred to Judiciary. S.J. 14

3 January 27 - Scheduled for hearing.

4 January 27 - Passed as amended, AYES 5, NAYS 2. S.J. 185